

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID BOWEN,

Plaintiff,

v.

Case No. 08-12877

MICHIGAN DEPARTMENT OF
CORRECTIONS, SERGEANT ALLEN,
PATRICIA CARUSO,

HONORABLE AVERN COHN

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION
AND
GRANTING IN PART DEFENDANT PATRICIA CARUSO'S MOTION TO DISMISS**

This is a prisoner civil rights case under 42 U.S.C. § 1983 claiming violations of the Eight Amendment. Plaintiff's claim stems from him falling down 26 steps while being moved to an upper floor cell and injuring his back. Plaintiff says he has a medical detail for a ground floor cell. Plaintiff seeks compensatory damages and declaratory relief. The matter has been referred to a magistrate judge for all pre-trial proceedings. Defendant Patricia Caruso, Director of the Michigan Department of Corrections, filed a motion to dismiss on the grounds that the complaint alleged no facts showing her personal involvement.

On February 25, 2009, the magistrate judge filed a report and recommendation (MJRR) recommending that the motion be granted in part. Specifically, the magistrate judge recommends that plaintiff's claim against Caruso in her individual capacity be dismissed but that the Court retain jurisdiction over Caruso in her official capacity in

connection with plaintiff's request for declaratory relief. Plaintiff has not objected to the MJRR and the time for filing objections has passed.

Accordingly, the MJRR is ADOPTED as the findings and conclusions of the Court. Caruso's motion to dismiss is GRANTED IN PART. Plaintiff's claim against her in her individual capacity is DISMISSED. Plaintiff's claim against her in her official capacity continues.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 19, 2009

I hereby certify that a copy of the foregoing document was mailed to David Bowen, 482624, Chippewa Correctional Facility, 4269 W. M-80, Kincheloe, MI 49784 and the attorneys of record on this date, March 19, 2009, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160